

**Town of Foxborough  
Conservation Commission Minutes  
March 11, 2013**

**Members Present:** Robert Boette (Chair), Allan Curtis (Vice Chair), Eric Nelson (Clerk),  
Judith Johnson, and Valerie Marshall  
**Members Absent:** Douglas Davis, James Marsh  
**Staff Present:** Jane Sears Pierce, Conservation Manager and Lee Ann Tavares, Secretary  
**Others Present:** See attached sign-in sheet

**Meeting Opened**

Bob Boette opened the meeting, held in the Andrew A. Gala Jr. Meeting Room, at 7:00 p.m.

**Discussion Re: Potential Auction Properties**

Lincoln Hill Property, Oak Street

Kevin Paicos, Town Manager, was present and stated that based on the opinion of Town Counsel the ownership of the Lincoln Hill property on Oak Street was clear. It could go to Town Meeting to clearly put it into Conservation protection. The Recreation Department had previously stated that they have no intention of using the property. Mr. Paicos recommended waiting to go to Town Meeting about this issue, as it is a controversial subject right now. He added that the Selectmen have expressed interest in possibly getting a second opinion, but he declined to get one.

Val told Mr. Paicos that according to Irene Del-Bono, Director of the Conservation Restriction Review Program, an attested copy of the Town Meeting vote to purchase the property could be recorded against the deed. Mr. Paicos stated that Town Counsel Cindy Amara told him this too, but added that only Town Counsel could do this. He added that it must be recorded by an attorney. Val disagreed with Mr. Paicos on that statement.

*Eric Nelson enters at 7:10PM*

Mr. Paicos added that the Commission does not have the authority to employ legal counsel, but the Commission could get a lawyer that would do it pro bono. Mr. Paicos stated that the front (Oak Street side) of the property is not rare species habitat as it is paved and contains buildings, suggesting that the Commission could accrue a lot of favor by selling one or two lots along the front of the property. He added that he would back up whatever the Commission decides to do.

Heather Harding, Recreation Commission, also attending the meeting was asked why the Recreation Department did not propose to use the property and she stated that they did not have the funds.

Val asked about selling property that had been purchased with federal revenue sharing funds. It was her understanding that you couldn't sell a property purchased with these funds, or you would owe money back. She added that this information all comes after the fact and that research should have been done before the Town was told about possibly selling the property. Val was concerned that the town would have to pay back federal funds. This and the cost per student for single family homes, which is \$13K annually, could end up costing the town money. Mr. Paicos explained that he had been a grant administrator and said that the value would still be in the remaining property so the town would not have to pay back anything.

Judi stated that as a Commission member, her job is to protect it for the citizens of Foxborough. She has a long-term perspective, posing the question "what towns do people want to live in?"

People want to live in towns with open space. Also, abutters to conservation properties can have conflicts with conservation uses, such as trails. Val stated that the Commission was not opposed to selling the 120 Spring Street property, if the current tenants don't want to continue to live there.

Judi agreed stating that the Commission is not opposed to selling property per se, just not undeveloped land.

Val suggested that there is still an opportunity for the Recreation Department to use the property, adding that the Commission would like to see it used for the purposes that the town voted for.

Ms. Harding and Deb Giardino, Recreation Director, stated that their new Commission member, Jim Greene, is active with the scouts and had suggested that maybe they would “adopt” the area. Ms. Harding said that the scouts use the Cocasset River Recreation Area on Mill Street and it is working out great. Mr. Paicos thought that was a good, productive use of the property with no impingement on habitat.

Val stressed that the Commission wants to work with the Town and compromise, but it needs to be a reasonable compromise. Mr. Paicos asked if there was anything he could do to help. He suggested that the Recreation Committee and the Conservation sub Committee get together to research ideas and send a memo to the Board of Selectmen.

#### Garrett Spillane Property

Val asked about the Garrett Spillane property. Judi informed Mr. Paicos that there is a vernal pool on the site that should be disclosed to any buyers; also selling one piece of property could open up the area to many single family homes. Mr. Paicos asked Jane to certify the pools during the coming spring. Bob stated that Selectman Mark Sullivan advised selling the property with restrictions, to prevent opening up the whole area, i.e. allowing only a single family house, not a road. The Commission will send a memo to the Selectmen noting their concern about the sale of the property.

#### **Enforcement Order, East Belcher Road Compost Facility**

Information Reviewed: Draft Enforcement Order

Rich Leslie, Bay Colony Group, Bob Swanson, Highway Superintendent, and Kevin Paicos, Town Manager, were present. Mr. Paicos explained that when Andy Felix, the compost facility operator, went in to work on the property, he filled the wetlands. He stated that the fact is, he filled the wetlands, so there are two alternatives, either restore or replicate the area.

Bill Grieder, Planning Board Chairman, was also present. He asked if they could file for Site Review with the Planning Board for the compost area and come before the Commission for the wetland restoration and then file for the rest of the lot after the wetland issues have been corrected. He is not sure whether Mr. Felix will do the restoration work, but if not, they could get another vendor.

Mr. Paicos indicated that they had a potential opportunity, since a plan had been produced. Judi explained that the Commission never approved the plan nor was it based on an approved wetland delineation. The Compost Site’s RFP allowed for more expansion than was allowed by the Commission. The original Request for Determination, filed by Bob Swanson, was for a 150 foot by 250 foot compost pad. At the time of the filing, the Commission had asked Mr. Swanson if that area would be big enough and told him that he would have to file a Notice of Intent if he needed to go beyond the 150 foot by 250 foot pad in the future.

The compost area is scheduled to open on April 1, but first replication/restoration needs to be completed and a new site plan is required. Mr. Leslie stated that the plan had been approved during the Site Plan Review. Mr. Paicos noted that Enforcement Orders would go through the court. Judi explained the process for Enforcement Orders, adding that they do not have to go through Court. Once the Enforcement Order is satisfied, they can ask for a site plan. Val added that the Enforcement Order would be issued to the Town.

Mr. Paicos disagreed, adding that the Town is not party to the problems. Judi explained that the Determination was issued to the Town and then read excerpts of the DEP’s Enforcement Manual. Val stated that they should resolve the Owner vs. Operator responsibility issue first. She added that

the Commission's hands are tied since they issued the Determination to the Town, which stated that if they wanted to go beyond the 150 foot by 250 foot area, they would need to file a NOI. The Determination was issued before the RFP contract with Mr. Felix. The RFP for the site may not have contained information regarding the Commission's Determination.

Mr. Leslie argued that there was a wetland line and a "fill" area on the on the Planning Board's site plan. Val stated that this plan had not been submitted to the Commission, only to the Planning Board. Jane then read the Planning Board's Site Plan Approval Condition #22, which stated: "Expansion of the Compost area beyond the area reviewed by the Conservation Commission in their determination of May 9, 2011 shall require the filing of a Notice of Intent with the Commission."

Mr. Paicos asked the Commission what they wanted to happen and offered to help. He stated that they won't know what to do until extensive research is done. Val explained that the Commission had done the research and saw a shared responsibility, adding "how can we do this?" Planning Board members reminded the Commission that Mr. Felix needed to get his permits in order, since his permit with the Planning Board has expired.

Judi explained that Bay Colony's recently presented plan was incorrect, since the now-filled wetlands were never delineated prior to filling. She opined that a wetland scientist will need to delineate the wetlands through aerial photo interpretation, which she regularly does in her line of work. In order to move forward, the Commission will need to know the size of the wetland, prior to being filled.

Val explained that during a previous meeting, the Commission had discussed moving the berm and creating a new wetland, setting a date to meet in the field to review the plan. During the site visit with Rich Leslie, Bob Swanson and three Commissioners, the plan was reviewed, so that it could be discussed and finalized during this meeting.

Mr. Leslie reviewed a draft restoration plan (titled "Progress Print"), explaining that the berm would be moved almost 70 feet inland, regraded and vegetated, and a drainage swale would be added. He was hoping to get guidance from the Commission on how to proceed. Judi read verbatim from the Wetland Enforcement manual regarding the procedures that needed to be followed. She indicated that their representative, PARE Corp., had already performed a delineation of the non-filled wetlands, which was good and that PARE could do an after the fact delineation through aerial photo interpretation. She then noted that the filled wetland was a poor quality, low functioning phragmites wetland, recommending that this fact should be documented, since it would give the Commission more leeway in terms of restoration. Mr. Paicos asked that both the aerial photo delineation of the wetlands and Mr. Swanson's project narrative be completed by close of business the following day.

Val brought up another issue: the underground drainage that was added without prior review or approval. The Commission was concerned that it might intercept polluted drainage from the adjoining closed landfill area. Mr. Paicos stated that he was told that this would not happen, indicating that it will be written that the leachate would not come from the landfill. Mr. Swanson offered to knock out the drainage beyond the berm area, when they move the berm.

Judi explained how the pond area should be restored, stating that her intention would be to create a restoration area with irregularity in depth. They should excavate the area to reduce phragmites, and since phragmites were not growing where cattails are currently growing along the edge of the pond, she suggested digging the phragmites areas (but not the pond area) to the same level as the edge of the pond (where the cattails are growing). Some phragmites areas should be excavated down one foot and others to a depth of two feet, to completely remove the phragmites and their roots.

Mr. Leslie asked whether Judi would do the aerial wetland delineation, since he did not know whether PARE could do the photo interpretation work or, if so, how soon they could finish it.

Val stated that the Commission wanted to work with them, not against them, and stressed that they had spent the last two months, trying to work with Mr. Swanson and Mr. Felix, while following an

identified process (the DEP Enforcement Manual). The Commission wants it clean with no lawsuits; that's our goal. If not, the process would be much worse. We've tried to be creative and tried to work with this. Mr. Paicos added "we are not guiltless either." Val reiterated that we are all going to work together and get this done; if issues come up, let us know and we'll figure this out. The Commission will issue the Enforcement Order tonight with narrative.

*5 min recess*

### **Continued NOI, 10 East Belcher Road, DEP #157-510**

**Information Reviewed:** Revised plan dated 2/26/13

Applicant Rich Touzos and his representative Robert Truax, GLM Engineering, were present. Mr. Truax described the construction sequence, indicating that they would be building the rain garden first. He added that safety bars will be put on the pipe, as previously pointed out by the Commission. Jane also asked for the required Stormwater Check list.

**Motion** was made by Eric Nelson to close the hearing pending or the receipt of the Stormwater Check list; seconded by Allan Curtis. **Vote: 5-0-0**

### **Enforcement Order, East Belcher Road Compost Facility, Continued Discussion**

The old delineation needs to be removed and a new aerial delineation added in its place. A determination of what was filled needs to be determined and then the Commission will determine what the compensation ratio will be. Judi indicated that the low quality (phragmites) wetland would be replaced by a higher quality restoration area, resulting in a net environmental benefit. The Commission will need to approve the final restoration plan. Mr. Paicos asked for copies of the signed Enforcement Orders, which he would issue to Bob Swanson and Andy Felix tomorrow. A special meeting to discuss the Compost Facility (only) was scheduled for March 18.

### **General Discussion:**

Jane reported that the revolving account had been set up for the rental income.

Mr. John Root will present *Edible Wild Plants* at the Recreation Center for Earth Day, 4/22, 6PM.

### **Enforcement Order – East Belcher Road Compost Facility**

**Motion** was made by Judi Johnson to ratify the Enforcement Order as revised, seconded by Allan Curtis. **Vote: 5-0-0**

### **Meeting Adjourned**

**Motion** was made by Valerie Marshall to adjourn; seconded by Judi Johnson. **Vote: 5-0-0**

The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Eric Nelson, Clerk

Draft minutes submitted by Lee Ann Tavares: 5/29/13

Reviewed by Jane Pierce: 6/3/13

Approved by Commission: 6/17/13

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### **Documents, Not Referenced Above, Reviewed During Meeting**

#### **Attached Documents:**

1. Agenda, March 11, 2013
2. Meeting Sign In Sheet

#### **Location of Other Documents:**

3. Manager's Report, filed in Manager's Report binder in Conservation Commission's office.
4. Referenced projects' documents: please see Conservation Commission's project file